

Summary of 2003 General Assembly

The following is a summary of the actions taken during the 2003 session of the Virginia General Assembly relative to the Fauquier County's Legislative Priorities.

- **Adequate Public Facilities** - Fauquier County supports Adequate Public Facilities legislation, which would permit high growth localities, as part of their subdivision or zoning ordinance, to determine whether public facilities are adequate to support the services which will be required by the proposed subdivision or rezoning.

There were three bills introduced in the Senate: Senator Chichester introduced SB1029 on behalf of his localities, Senator Norment introduced SB1126 and Senator Byrne introduced SB1292. SB1292 was the broadest of the three bills. All were sent to the Commission on Growth and Economic Development. The Commission on Growth and Economic Development held its first meeting for March 19th. The issue of adequate public facilities was a major focus of that meeting, including a presentation by County Administrator Bob Lee. In the House, Delegate Bob Marshall introduced three APFO bills: HB 1538, HB 1539, and HB 1540. As the committee deliberations progressed these three bills were combined with Delegate Marshall's Impact Fee bill (HB1544) and considered as an amendment in the nature of a substitute to a fifth land-use bill he introduced (HB2039). The Committee on Counties, Cities and Towns passed the bill by indefinitely (PBI). Only Delegates Marshall & McQuigg voted against PBI.

- **Impact Fees** - Fauquier County continues to support legislation that would allow localities the option to assess impact fees for School Construction and other essential government services in lieu of voluntary cash proffers.

Delegate Marshall's bill on road impact fees, HB1544, was PBI'd (see above). This bill would have removed the July 2003 sunset that was part of the Stafford County compromise bill sponsored by Delegate Bill Howell. The Speaker opposed this bill because he feels that such an action would go back on his commitment when his bill passed several years ago. Delegate Marshall had 2 other Impact Fee bills: HB2040 & HB2041, both bills were "laid on the table" in House Counties, Cities & Towns.

- **School Funding** - Fauquier County supports the full funding of the State's share of the Standards of Quality, full funding of any categorical educational mandate, including pay raises, and full funding of the State's portion of the Standards of Learning relating to instructional technology. Fauquier County also supports increased funding for School Construction.

Funding for FY04 for Fauquier County was approved in the total amount of \$28,934,225.

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- **Cost of Competing** - Fauquier County respectfully requests those State legislators representing Fauquier County introduce legislation to incorporate Fauquier County into the Cost of Competing School Funding Formula.

Budget amendments were introduced by Senator Potts and Delegates Athey and Lingamfelter. None of these requests were included in the final budget.

- **Local Revenue Authority:** Fauquier County opposes any measure that would eliminate or reduce any local government revenue authority.

46 bills and resolutions were introduced that impacted, either positively or negatively, local revenue authority. The bills that passed are summarized below (HB1630, HB1750, HB2659, HB 2715 and SB1033).

HB 1630 Summary as passed: Refund of taxes erroneously collected or paid. Allows a refund to a claimant who pays a tax, either for the claimant or for the benefit of another on whose behalf the tax is paid, if he makes a sufficient showing that the tax was erroneously collected by providing an affidavit that (i) the vehicle identification information provided on the Application for Certificate of Title and Registration, the certificate of origin, manufacturer's statement of origin, or title was incorrect, or (ii) the transaction would have been exempt from taxation.

HB 1750 Summary as passed: Property tax exemptions. Specifies the process localities must follow to exempt from real or personal property taxes the property of certain charitable and other related organizations. The legislation stemmed from the constitutional amendment that took effect on January 1, 2003, giving localities the authority to grant such exemptions subject to restrictions and conditions set by the General Assembly. The bill has an emergency effective date of January 1, 2003.

HB 2659 Summary as passed: Collection of local taxes. Provides for an extension of time on the local treasurer's administrative remedies (lien, distress) where the tax due has been reduced to judgment. Currently, the time limitations do not affect a judgment lien so the local treasurer may continue to collect during the time the lien is valid.

HB 2715 Summary as passed: Discount for early payment of taxes. Allows localities to establish discounts for the early payment of taxes.

SB 1033 Summary as passed: Personal property tax; situs for assessment of motor vehicles. Clarifies that the situs for assessment purposes of business vehicles is the locality in which the business owner has a definite place of business and from which place he controls or directs the use of the vehicles, provided he has sufficient evidence that he has paid the tax to such locality.

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- **Local Government Zoning and Land Use Authority** - Fauquier County opposes any further dilution of the zoning and land use regulatory authority of local governments.

19 bills and 1 resolution were introduced that were related to local land use authority. The only bills to pass were HB2056 (Cole) and SB1052 (Hanger). These are summarized below.

HB 2056 Summary as passed: Special land use assessment. Permits localities to make land used for aquaculture or specialty crops eligible for local-option agriculture land use assessment even if such land is less than the five acre minimum ordinarily applicable to agricultural or horticultural property.

SB 1052 Summary as passed: Preservation of important farmlands. For the purposes of receiving federal funds, authorizes state agencies and local governments, with the cooperation of the United States Department of Agriculture, to designate state and locally important soils, which include prime, unique, and locally important farmland. The bill also defines farmland, prime farmland and unique farmland. In addition, the bill requires landowner consent for individual participation in any state program that is based on such designation.

- **Revenue Sharing** - Fauquier County strongly supports any legislative proposal that results in the State sharing a portion of its income tax revenues (within its existing rate structure) with localities and which provides local flexibility in determining how it should be used.

No Revenue Sharing bills were introduced.

- **Increased Local Authority** - Fauquier County supports legislation to provide for increased local authority in planning, zoning and revenue matters through a statutory relaxation of the Dillon Rule. The relaxation of the Dillon Rule should not, however, be accompanied by a shift of responsibility for various programs from the state government to local government.

36 bills and resolutions were introduced that impact local authority, most passed. The following is a summary of those bills:

HB 1459 Summary as passed: Erosion and Sediment Control; requirements for plan approval. Removes the requirement to provide the name of an individual holding a certificate of competence as a prerequisite for approval of erosion and sediment control land-disturbing activity plans. The bill requires instead that the name of such certificate holder must be provided to the plan-approving authority prior to actual engagement in land-disturbing activity shown on the approved site plan. If the name is not provided prior to engaging in the land-disturbing activity the plan's

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approval may be revoked and the person responsible for carrying out the plan would be subject to penalties under the Erosion and Sediment Control Law.

HB 1590 *Summary as passed:* Notice of times and locations for registration.

Deletes the requirement that the general registrar shall give notice each January of the schedule for voter registration times and locations for the calendar year by posting the notice at the courthouse and publishing it in a newspaper with general circulation in the county or city. The bill retains the requirements for published notice of the registration times and locations on the final day to register before each election. The bill adds publication on the official website for the county or city as a means of giving notice for certain additional registration sites and times.

HB 1651 *Summary as passed:* Freedom of Information Act; record exemption for employment discrimination investigations conducted by certain local public bodies. Expands the record exemption for investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management to include any such investigations conducted by such personnel of the local governing body who are authorized by law to conduct these investigations in confidence, including local school boards.

HB 1664 *Summary as passed:* Payments to volunteer rescue squads by localities. Provides that a locality may make appropriations of money to volunteer fire companies or rescue squads in an amount sufficient to enroll any qualified member of such volunteer fire company or rescue squad in any program available within the locality intended to defray out-of-pocket expenses for emergency ambulance transportation.

HB 1881 *Summary as passed:* Service districts. Expands the power of service districts to include the control of insects that may carry diseases that are dangerous to humans.

HB 1925 *Summary as passed:* Technology infrastructure projects added to Public-Private Education Facilities and Infrastructure Act of 2002. Amends the Public-Private Education Facilities and Infrastructure Act of 2002 to include technology infrastructure as a qualifying project. The original version of this bill was a recommendation of the Joint Commission on Technology and Science.

HB 2058 *Summary as passed:* Local codification of ordinances. Provides that at least one copy, rather than three copies, of any codification or recodification, and at least one copy, rather than three copies, of every supplement thereto shall be kept in the office of the clerk of the governing body and shall be available for public inspection during normal business hours.

HB 2164 *Summary as passed:* Virginia Wireless Service Authorities Act. Authorizes any locality to create a wireless service authority, which may provide

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qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56. The authority shall have many of the powers typically granted to authorities, including the issuance of revenue bonds.

HB 2211 *Summary as passed: Freedom of Information Act; critical infrastructure and vulnerability assessments.* Expands the current record exemption for engineering and architectural drawings to protect the safety of any public building or its occupants, by clarifying that records relating to critical infrastructure or structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems, as well as vulnerability assessments are exempt. The bill applies to all buildings, whether public or private. The bill requires certain procedures to be followed to protect such records. The bill also provides that nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the structural or environmental soundness of any building, nor shall it prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event. The bill also contains a corollary open meeting exemption for the discussion of such records in a closed meeting. The bill consolidates two related exemptions and contains other technical amendments.

HB 2314 *Summary as passed: Erosion and Sediment Control Law.* Clarifies that shoreline erosion control projects involving land-disturbing activities in those tidal waters that are under the regulatory authority of local wetlands boards, the Virginia Marine Resources Commission, and the U.S. Army Corps of Engineers are not subject to the Virginia Erosion and Sediment Control Law. However, any land-disturbing activities outside this exempted area are subject to this law.

HB 2397 *Summary as passed: Public utilities; communications services.* Gives the State Corporation Commission the authority to enforce the provisions of law that permit a locality to offer communications services, including local telephone service, to customers. Localities that have obtained a certificate to offer local telephone service are required to file an annual report demonstrating that they have complied with the requirements of law regarding certain accounting practices. Localities offering qualifying communications services, including high-speed data and Internet services, are required to provide nondiscriminatory access to for-profit providers of communications services on a first-come, first-served basis, are prohibited from cross-subsidizing such services, and are prohibited from acquiring facilities for such services by eminent domain. The Commission may deem telephone services competitive on the basis of a category of customers, and the Commission may also determine bundles of competitive and noncompetitive services if the noncompetitive services are available separately.

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HB 2492 Summary as passed: Freedom of Information Act; record exemption; investigative records of insurance claims. Expands an existing exemption to include investigative notes, correspondence and information furnished in confidence with respect to an investigation of a claim or potential claim against a public body's insurance policy or self-insurance plan. The bill provides, however, that nothing shall prohibit the disclosure of information, taken from inactive reports upon expiration of the period of limitations for the filing of civil suits

HB 2647 Summary as passed: Lighting level regulation; Augusta County. Allows Augusta County to regulate the maximum upward exterior illumination levels of buildings and property zoned or used for commercial or business purposes. Such ordinance shall only apply to lighting installed after the effective date of the ordinance and shall not affect or be applied to agricultural or silvicultural operations, utility companies, facilities owned by the Department of Corrections, to lighting regulated by the Uniform Statewide Building Code or to premise security lighting for certain multi-family residential or commercial office buildings.

HB 2694 Summary as passed: Voluntary settlements among local governments; acceptance of proffers. Allows certain localities to include provisions for the acceptance of proffered conditions on behalf of other localities pursuant to voluntary settlement agreements.

SB 696 Summary as passed: Jail processing fee. Authorizes the collection of jail processing costs incurred by a regional jail pursuant to a local ordinance. The General Assembly authorized these fees in 2002 applicable to local sheriffs' offices to defray the costs of processing arrested persons.

SB 735 Summary as passed: Conveyance of real estate for delinquent taxes or certain liens. Provides that real estate for which there are delinquent taxes may be conveyed to the locality if the real estate has a value of \$20,000 or less and such taxes alone exceed 25 percent of the value of the real estate. This bill is identical to HB 2277.

SB 737 Summary as passed: Virginia Freedom of Information Act; exemptions for contract negotiations. Adds a record exemption for records relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such records would adversely affect the bargaining position or negotiating strategy of the public body. The bill provides that such records shall not be withheld after the public body has made a decision to award or not to award the contract and shall not apply to the release of records in connection with procurement transactions governed by the Virginia Public Procurement Act. The bill also provides an open meeting exemption for the discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body. The bill is a recommendation of the FOIA Council.

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SB 820 Summary as passed: Removal of abandoned nonconforming signs.

Provides that a locality may order the removal of a nonconforming sign that has been abandoned. For purposes of this section, a sign shall be considered abandoned if the business for which the sign was erected has not been in operation for a period of at least 2 years.

SB 913 Summary as passed: Erosion and sediment control law; certificate of competence. Grants plan-approving authorities the option to waive the certificate of competence requirement for land-disturbing activity for agreements in lieu of a plan. Currently, all plan-approving authorities must require that the name of an individual, who holds a certificate of competence and who will be in charge of and responsible for carrying out the land-disturbing activity, be provided for both erosion and sediment control plans and agreements in lieu of a plan. An agreement in lieu of a plan is a contract between the plan-approving authority and the landowner used for ensuring proper implementation of conservation measures during construction of a single-family residence.

SB 967 Summary as passed: Board of zoning appeals. Provides that in the case of an appeal from the board of zoning appeals to the circuit court, from an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, the decision of the board shall be presumed correct. The appealing party may rebut the presumption by proving by a preponderance of evidence that the board erred in its decision. Current case law provides that a decision of the board is presumed to be correct and can be reversed or modified only if the trial court determines that the board applied erroneous principles of law or was plainly wrong and in violation of the purposes and intent of the zoning ordinance. The bill further provides that in the case of an appeal from any decision of the board that denied an application for a variance or an application for a special exception, there shall be a presumption that the decision of the board is correct, but the petitioner may rebut that presumption by showing to the satisfaction of the court that the board applied erroneous principles of law, or where the discretion of the board is involved, that the decision was plainly wrong and in violation of the purpose and intent of the zoning ordinance.

SB 1013 Summary as passed: Conservation of trees during localities' development. Amends current provisions that allow localities to provide by ordinance for the planting and replacement of trees during the development process. Such tree conservation ordinances shall include provisions for the reduction of tree canopy requirements or the granting of tree cover credit in consideration for the preservation of certain trees. Localities may designate certain types of undesirable trees that shall not be used to meet minimum tree canopy requirements. The bill also provides that the new law does not invalidate 10-year-minimum tree cover standards adopted by cities established before 1780, or 20 minimum tree cover replacement standards adopted by localities after July 1, 1990.

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SB 1066 Summary as passed: Disposal of trash or cutting of weeds. Allows localities to prescribe civil and criminal penalties for violations of ordinances related to the disposal of trash and the cutting of grass and weeds. The penalties may be up to \$50 for the first violation and up to \$200 for subsequent violations within one year of the first violation. Total civil penalties shall not exceed \$3,000 in a 12-month period. These penalties are in lieu of criminal penalties, except that localities may prescribe a Class 3 misdemeanor in the event of three civil assessments against the same defendant in a 24-month period. The bill adds these same provisions to the laws authorizing localities to restrict or remove inoperable motor vehicles on residential or commercial property.

SB 1088 Summary as passed: Land application of sewage sludge; requirements and regulations; study; report. Amends current biosolids land application law by establishing standard complaint and investigation procedures, including the maintenance of a searchable electronic database of complaints by the Virginia Department of Health (VDH). The bill requires nutrient management plans (NMPs) prepared by persons certified by the Virginia Department of Conservation and Recreation (DCR) for all land application sites, regardless of the frequency of application. Under current VDH regulations, only sites where biosolids are applied more than once every three years are required to prepare NMPs prior to permit issuance. The bill also requires DCR approval of all NMPs for sites where the permit authorizes land application more than once every three years at greater than 50 percent of agronomic rates, and certain sites operated by the owner or lessee of a Confined Animal Feeding Operation or Confined Poultry Feeding Operation. The bill allows VDH to incorporate into the permit reasonable site-specific special conditions to protect the environment or the health, safety and welfare of persons residing in the vicinity of the proposed application site. VDH must also include in its notice of special conditions such site-specific conditions recommended by the locality. The permit applicant will have at least 14 days to respond to the proposed conditions and any objections shall be heard by the Health Commissioner. The bill requires permit holders to provide VDH with evidence of financial responsibility, to be established by regulation, which shall be available to pay claims for cleanup costs, personal injury and property damage. The bill creates a land application certification program to be established by VDH pursuant to which all future land application sites must have a certified land applicator on location at all times during the application process. The bill grants localities that have adopted a biosolids testing and monitoring ordinance the authority to order the abatement of land application activity for violations of relevant laws and regulations. Finally, the bill requests that VDH review certain reports of the National Research Council and the United States Environmental Protection Agency, report its findings to the Virginia Board of Health by June 30, 2004, and if requested by the Board, initiate rulemaking proceedings by September 1, 2004.

SB 1099 Summary as passed: Joint schools. Allows two or more school boards, with the consent of the State Board, to establish joint or regional high schools, including regional public charter schools, to offer, in addition to a comprehensive high school

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curriculum, specialized training to students desiring to pursue careers in law enforcement, fire fighting, emergency and rescue services, and other occupations addressing public safety and welfare. These schools may be designed to incorporate the instructional services of retired or disabled emergency, fire, rescue, and law-enforcement personnel and internships with local agencies and organizations providing such emergency, fire, rescue, and law-enforcement services.

SB 1295 Summary as passed: Voluntary settlements among local governments; acceptance of proffers. Allows certain localities to include provisions for the acceptance of proffered conditions on behalf of other localities pursuant to voluntary settlement agreements.

- **Purchase of Development Rights:** Fauquier County supports increased state funding for the purchase of conservation easements and other land conservation needs.

There were two bills directly related to PDR's, both were killed. The first bill, HB1883 (May) proposed the imposition of a 1-dollar fee on every deed admitted to record as of July 1, 2003. The second bill, HB1993 (Bloxom), would have distributed 50 percent of the amount of state recordation tax collected in excess of \$80 million, beginning June 30, 2004, and each year thereafter, to the counties and cities based on the percentage of recordation taxes collected in each county and city. The remaining 50 percent would be deposited in the state's general fund. The additional amount above \$80 million distributed to counties and cities would be used for land preservation. An additional bill that had similar goals to a PDR program, HB2805, The Agricultural Enterprise Zone Act was tabled in House Finance.

- **Transfer Tax:** Fauquier County supports legislation that would enable counties and cities, through local option, to enact a real estate transfer tax.

Frederick County had proposed the concept of a transfer tax authority in lieu of cash proffers. They were not successful in finding a patron for the legislation.

- **Land Use Taxation:** Fauquier County supports legislation which would lengthen the Use Value Taxation roll-back period to at least ten years.

The Farm Bureau has agreed to meet with representatives of the County to discuss possibilities for changes to the roll-back period. The initial meeting is scheduled to take place April 22nd. Representatives of the staff of the Farm Bureau and the chair of their Land Use Committee will meet with members of the County staff to begin exploring the possibilities of legislation that the Farm Bureau could support.

Other Issues:

Affordable Housing – No legislation was introduced this year but the ground work was laid for pursuit of legislative authority similar to the authority granted Albemarle County. It is anticipated that this will be an effort for the 2004 session of the General Assembly.

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Vehicle Safety Inspections – Delegate Lingamfelter and Senator Potts each sponsored bills granting Fauquier County the authority to conduct truck safety inspections, HB1500 and SB712 respectively. SB712 was amended to grant the authority to all localities. HB1500 was “rolled into” HB1680 and amended to grant the authority to all localities. Both bills have been signed into law.

Water Resources Planning – Two bills were introduced at the request of the Rappahannock River Basin Commission. SB968 (Houck) was referred to the State Water Commission by the Senate Committee on Local Government. HB2591 (Pollard) was PBI’d in House Committee on Counties, Cities and Towns. The Chairman of the State Water Commission (Sen. Williams of Newport News) has indicated an interest in a presentation to the Water Commission on the work of the Rappahannock River Basin Commission and its legislative recommendations. The RRBC has also directed that correspondence be sent to the Commission on Growth and Economic Development to request the opportunity to present the issue to that body.

Land Use Taxation (exclusions) – This issue was encouraged by the interest of Clarke County in seeking local option authority to exclude commercial, industrial and/or residentially zoned land from land-use taxation. No bill was introduced. The Board of Supervisors met with their legislative delegation and decided not to request their representatives to patron any legislation on behalf of the County.

Culpeper Juvenile Facility – The final budget included language directing that “the Secretary of Public Safety, in consultation with the Secretary of Administration and with local governments in the region, shall report on options for future utilization of the Culpeper Juvenile Correctional Center. Copies of the report shall be provided to the Governor and the Chairmen of the Senate Finance and House Appropriations Committees by September 15, 2003.” It will be important to follow the progress of this review.

Winchester Regional Jail – The budget also included language concerning the potential expansion of the regional jail. The amendment provides an exception to the moratorium on approval by the Board of Corrections of jail capital outlay projects for the Clarke-Fauquier-Frederick-Winchester Regional Adult Detention Center. It must be noted that this “exception” is only valid through the remainder of the current budget and will have to be “renewed” during the 2004 session of the General Assembly.